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Our Reference: TMA-105-B

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: John J. Borzym
Serial Number: 10/762,430
Filing Date: January 22, 2004
Examiner/Art Group Unit: Maurina T. Rachuba/3723
Title: SUPPORTED SHEAR WITH REVERSIBLE DRIVE
AND METHOD OF OPERATING SAME

CERTIFICATE OF FACSIMILE TRANSMISSION

MAIL STOP APPEAL BRIEF - PATENTS

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Transmitted with this document are an Appeal Brief and Proposed Amendment in the above-identified application.

X Please charge \$250.00 to Deposit Account No. 25-0115.

X Please charge any deficiency or credit any excess in the enclosed fees to Deposit Account Number 25-0115.

I hereby certify that this correspondence was transmitted via Facsimile to (571) 273-8300 on December 5, 2006.



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benefit of hindsight, is insufficient on its face. It is worthy of note that the ultimate conclusion in this decision was a determination that the references on which the Examiner and the Board of Appeals relied were *improperly combined* and the rejection was reversed.

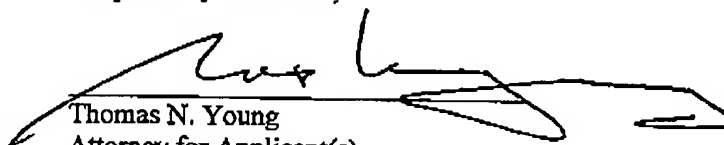
The result of Oetiker must obtain here. Ward is not in the field of Applicant's endeavor, i.e., tube cutting, and there is virtually no room for debate on that point. Secondly, Ward is not "reasonably pertinent" to the particular problem which Appellant faced (making a supported shear operate more advantageously); rather, Ward is related to issues involving the lathing or grinding of planar components. There is simply no demonstrable relationship whatsoever between Ward and the technology or problems of the present invention. By any standard Ward is a non-analogous reference and never should have been used in a § 103 rejection of Appellant's claims.

CONCLUSION

The final rejection of claims 1, 3-6, 10 and 11 does not comport with the law as it has existed for decades. The rejection is based on a combination of references using impermissible hindsight and does not provide the required showing of a teaching, suggestion, or motivation in the references themselves for combining them. The Ward patent is non-analogous art. The final rejection of all claims should be reversed.

Appellant waives oral argument.

Respectfully submitted,



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CLAIMS APPENDIX

Listing of Claims:

1. In a supported shear of the type which shears tube stock by lateral displacement of adjacent lengths of stock along a shear plane extending orthogonally through the stock:
 - a mandrel to be placed within the stock;
 - stationary tooling for receiving and holding said stock;
 - movable tooling adjacent the stationary tooling for receiving said stock; and
 - means including first and second hydraulic cylinders for alternately driving said movable tooling in opposite directions through an orbital path relative to the stationary tooling.
2. (Cancelled) Apparatus as defined in claim 1 wherein the means for driving includes first and second hydraulic cylinders.
3. Apparatus as defined in claim 1 wherein said means for driving further comprises:
 - a pinion connected to said movable tooling;
 - a first rack engaged with the pinion and mounted for linear translation to rotate said pinion in a first direction; and
 - a second rack engaged with the pinion and mounted for linear translation to rotate said pinion in a second direction.
4. Apparatus as defined in claim 3 further comprising:
 - power means for causing simultaneous linear translation of said first and second rack in opposite direction.
5. Apparatus as defined in claim 4 further including means for varying the power level of said hydraulic power means during translation of said rack.

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6. Apparatus as defined in claim 3 wherein the total linear displacement of said first rack is at least approximately equal to one revolution of said drive shaft .
7. (Cancelled) Apparatus as defined in claim 1 wherein:
said stock is tubular; and
said shear further comprises a mandrel extensible into said stock in the location of the shear plane to maintain the shape thereof during a shearing operation.
8. (Cancelled) For use in combination with a bladeless shear for linear stock which shear comprises a stock-receiving ram having an eccentrically driven wheel disposed therein, a wheel drive comprising:
a drive shaft connected to said wheel;
a pinion connected to said shaft for rotation therewith;
first and second racks engaging said pinion and linearly translatable to rotate the pinion in respective first and second opposite directions; and
power means for translating said racks.
9. (Cancelled) In a bladeless shear device of the type having first and second tools aligned with a work piece axis and means for causing orbital motion of one of the tools relative to the other:
an actuator having a linearly translating drive component; and
means for converting the linear translation of the drive component into orbital motion of said one tool.
10. A supported shear for the bladeless shearing of tube stock disposed on a mandrel comprising:
a first, fixed die for holding the stock;
a second, movable die for holding the stock immediately axially adjacent the first fixed die to define a shear plane between the two dies; and

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means for alternately driving the second, movable die in opposite directions through an orbital path.

11. A shear as defined in claim 10, wherein the means for driving comprises first and second hydraulic cylinders operatively connected to drive the second, movable die.

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EVIDENCE APPENDIX

No evidence is appended to the Substitute Appeal Brief.

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RELATED PROCEEDINGS APPENDIX

There are no related proceedings.